



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2017-0100; EPA-R05-OAR-2017-0501; FRL-9976-10-

Region 5]

**Air Plan Approval; Michigan; Revisions to Volatile Organic
Compound Rules**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revised rules submitted by the State of Michigan as State Implementation Plan (SIP) revisions. The main revision specifies volatile organic compound (VOC) limits for cutback and emulsified asphalts as well as the test methods for determining the VOC content of these products. Michigan also moved the adoption by reference citations from Part 6. Emission Limitations and Prohibitions - Existing Sources of Volatile Organic Emissions to Part 9. Emission Limitations and Prohibitions - Miscellaneous and updated references to federal test methods in several of its Part 6 rules.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2017-0100 or EPA-R05-OAR-2017-0501 at <http://www.regulations.gov> or via email to Aburano.Douglas@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal,

Environmental Engineer, Attainment Planning and Maintenance
Section, Air Programs Branch (AR-18J), Environmental Protection
Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois
60604, (312) 886-6052, rosenthal.steven@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document whenever
"we," "us," or "our" is used, we mean EPA. This supplementary
information section is arranged as follows:

- I. What are the State rule revisions?
- II. Did the State hold public hearings for these submittals?
- III. What is EPA's analysis of the State's submittals?
- IV. What action is EPA taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. What are the State rule revisions?

Michigan revised its rule R 336.1618 "Use of cutback or
emulsified paving asphalt" along with several other of its VOC
rules. Cutback asphalt is asphalt that has been liquefied by
blending with an organic solvent. Emulsified asphalt is asphalt
that has been liquefied by mixing with water and an emulsifying
agent. Both types of asphalt are used to pave or repair road
surfaces. The revision to R 336.1618 clarifies VOC limits for
cutback and emulsified asphalts and specifies testing

requirements for determining the VOC content of these products. Michigan also revised rules R 336.1611 to R 336.1614, R 336.1619, R 336.1622, R 336.1625, R336.1627 to R 336.1629, R 336.1632, R 336.1651, R 336.1660, and R 336.1661 for the purpose of removing adoptions by reference which have been moved to, and consolidated in, R 336.1902 "Adoption of standards by reference." Revisions to R 336.1622, R 336.1627 to R 336.1629, and R 336.1632 update references to federal test methods. These revisions were submitted on August 1, 2017.

Michigan submitted a revised R 336.1902 on February 7, 2017 as part of a separate rulemaking action. Michigan subsequently replaced the February 7, 2017 submittal with a November 8, 2017 supplemental submittal for its Part 9 rules in which it requested that only the following sections of R 336.1902 be included in its SIP. R 336.1902(1)(a), (1)(b)(iii), (iv), (vii) and (viii), (1)(c) to (e), (1)(g), (1)(i) to (n), (1)(s), (2)(b), (2)(e), (2)(g), (4)(a) to (f), (4)(l), (4)(o) and (p), (5), (8) and (9). In a February 6, 2018 memo from Michigan to EPA, it clarified that R 336.1902(4)(p) is the correct version of ASTM Method E169 for inclusion into the SIP; and R 336.1902(1)(b)(i), R 336.1902(3)(a) AND R 336.1902(4)(m) should be included in the Part 9 SIP revisions submitted in February and November 2017.

In a February 26, 2018 memo from Michigan to EPA it clarified that R 336.1902(1)(f) should also be included in the SIP.

II. Did the State hold public hearings for these submittals?

A public hearing on these Part 6 rule revisions was held on November 14, 2016. Only one comment was received and it was not addressed as it was not directed towards the subject rule revisions. A public hearing on the Part 9 (specifically R 336.1902) rule revisions was held on May 2, 2016 and no comments were received.

III. What is EPA's analysis of the State's submittals?

A. Rule 618 - Use of cutback or emulsified paving asphalt

The current SIP-approved version of Rule 618 only applies to cutback asphalts and requires Michigan Department of Environmental Quality (MDEQ) approval for use of cutback asphalts during the ozone season. Michigan revised its rules to clarify the requirements for cutback and emulsified asphalts under Rule 618. The revisions include a VOC content limit that determines whether an asphalt product can be used during the ozone season. In its current SIP-approved rule, cutback asphalts can only be used during the ozone season with MDEQ approval and there is no requirement that the products used during ozone season have a low VOC content. The revised rule

specifies a 3 percent VOC content limit to ensure that only low-emitting asphalt products are used during the ozone season. An October 4, 1979 policy memorandum titled "Clarification for Final SIP Actions on Asphalt Regulations" states that maximum solvent contents in the range of 5 to 7 percent are acceptable. This VOC content limitation for asphalt usage during the warmer ozone months should result in lower VOC emissions from the use of asphalt products. The revised rule also added definitions for asphalts, emulsified asphalts, as well as cutback asphalts, and specifies the test methods used to determine the VOC content of the asphalts. This rule is therefore approvable because it has an even lower VOC content than what is acceptable as RACT and is more enforceable than the existing SIP approved rule because it contains specific test methods for determining the percent VOC from both emulsified and cutback asphalt and the rule also requires that records be maintained of the manufacture, mixing, storage, use or application of any cutback or emulsified asphalt, including the VOC content of these asphalts.

B. Remaining Revisions - Incorporations by Reference

Michigan also revised rules R 336.1611 to R 336.1614, R 336.1619, R 336.1622, R 336.1625, R336.1627 to R 336.1629, R

336.1632, R 336.1651, R 336.1660, and R 336.1661 for the purpose of removing adoptions by reference which have been moved to and consolidated in R 336.1902 "Adoption of standards by reference."

The following rules contain the adoption of standards by reference that have been moved from the rules listed above:
R 336.1902(1)(a), (1)(b)(i), (iii), (iv), (vii) and (viii), (1)(c) to (g), (1)(i) to (n), (1)(s), (2)(b), (2)(e), (2)(g), (3)(a), (4)(a) to (f), (4)(l), (4)(m), (4)(o) and (p), (5), (8) and (9). These revisions are approvable as they merely move the location of the adoption of standards by reference.

IV. What action is EPA taking?

EPA is proposing to approve the revisions to Michigan's Part 6 Rules that were submitted on August 1, 2017, as revisions of the Michigan SIP. Specifically, we are approving R 336.1611 to R 336.1614, R 336.1618, R 336.1619, R 336.1622, R 336.1625, R336.1627 to R 336.1629, R 336.1632, R 336.1651, R 336.1660, and R 336.1661 into the Michigan SIP.

We are also proposing to approve revisions to Michigan's Part 9 rules that were submitted on November 8, 2018 and February 6, 2018. Specifically, we are approving R 336.1902(1)(a), (1)(b)(i), (iii), (iv), (vii) and (viii), (1)(c) to (g), (1)(i) to (n), (1)(s), (2)(b), (2)(e), (2)(g), (3)(a), (4)(a) to (f),

(4) (l), (4) (m), (4) (o) and (p), (5), (8) and (9).

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA proposes to incorporate by reference Michigan Administrative Code R 336.1902(1) (a), R 336.1902(1) (b) (iii), (iv), (vii) and (viii), R 336.1902(1) (c) to (g), R 336.1902(1) (i) to (n), R 336.1902(1) (s), R 336.1902(2) (b), R 336.1902(2) (e), R 336.1902(2) (g), R 336.1902(4) (a) to (f), R 336.1902(4) (l), R 336.1902(4) (o) and (p), R 336.1902(5), R 336.1902(8), and R 336.1902(9), effective December 20, 2016, and Michigan Administrative Code R 336.1611, R 336.1612, R 336.1613, R 336.1614, R 336.1618, R 336.1619, R 336.1622, R 336.1625, R 336.1627, R 336.1628, R 336.1629, R 336.1632, R 336.1651, R 336.1660, and R 336.1661, effective March 29, 2017. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those

areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds, and Ozone.

Dated: March 20, 2018.

Edward H. Chu,
Acting Regional Administrator, Region 5.

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